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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY E. FISH, JENNIFER A. GRIFFITHS, RICHARD A.
BORDERS, ROGER B. QUINCY III

Appeal 2008-2173
Application 10/027,787
Technology Center 1700

Decided: September 23, 2008

Before CHARLES F. WARREN, JEFFREY T. SMITH, and
LINDA M. GAUDETTE *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-42, the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Claims 1, 15, and 25 are illustrative of the invention and are reproduced (from the Claims Appendix of the Appeal Brief) below:

1. A flexible laminate structure comprising:
a first substrate containing a thermoplastic polymer and a second substrate containing a thermoplastic polymer, wherein at least one of said substrates is substantially impermeable to liquids but substantially permeable to gases, wherein each substrate is textured using heat and pressure to form elevations and depressions in each substrate, said depressions being fused together to form fused portions and said elevations forming unfused portions, said unfused portions defining pockets containing discrete regions of a functional material selected from the group consisting of particles, liquids, and combinations thereof, said pockets having an approximate width to height ratio of less than about 10.

15. A flexible laminate structure comprising:
a first substrate and a second substrate, said first substrate and said second substrates being selected from the group consisting of nonwoven webs having a thickness less than about 0.1 inches, films having a thickness less than about 0.05 inches, and combinations thereof, said first substrate containing a thermoplastic polymer and said second substrate containing a thermoplastic polymer, wherein at least one of said substrates is substantially impermeable to liquids but substantially permeable to gases, wherein each substrate is textured using heat and pressure to form elevations and depressions in each substrate, said depressions being fused together to form fused portions and said elevations forming unfused, said unfused portions defining pockets containing discrete regions of a functional material selected from the group consisting of particles, liquids, and combinations thereof, said pockets having an approximate width to height ratio of between about 1 to about 8.

25. A method for forming a flexible laminate structure comprising:
providing a first substrate containing a thermoplastic polymer;
depositing a functional material onto said first substrate in discrete regions, wherein a suctional force is used to facilitate the positioning of said functional material in said discrete regions, said functional material being selected from the group consisting of particles, liquids, and combinations thereof;

placing a second substrate containing a thermoplastic polymer adjacent said first substrate such that said functional material is sandwiched between said first and said second substrates;

texturing each substrate and fusing the thermoplastic polymer of said first substrate with the thermoplastic polymer of said second substrate using heat and pressure to form elevations and depressions in each substrate, said depressions forming fused portions and said elevations forming unfused portions, said unfused portions defining pockets containing said discrete regions of said functional material, said pockets having a approximate width to height ratio of less than about 10.

The Examiner relies on the following prior art references to show unpatentability:

Bjornberg	4,892,535	Jan. 9, 1990
Taylor	5,332,613	Jul. 26, 1994
Tanzer	5,411,497	May 2, 1995
Baer	5,938,650	Aug. 17, 1999

Appellants request review of the following grounds of rejection (Br. 4):

1. claims 1-10, 12-20, 22-34, and 36-42 under 35 U.S.C. § 103(a) as unpatentable over Bjornberg in view of Tanzer;
2. claims 1-10, 12-20, 22-24, 40 and 41 under 35 U.S.C. § 103(a) as unpatentable over Baer in view of Tanzer; and
3. claims 25-34, 36-39, and 42 under 35 U.S.C. § 103(a) as unpatentable over Baer in view of Tanzer, and further in view of Bjornberg.

Appellants' arguments are limited to independent claims 1, 15, and 25. Accordingly, we decide the first ground of rejection on the basis of claims 1, 15, and 25, the second ground of rejection on the basis of claims 1 and 15, and the third ground of rejection on the basis of claim 25.

37 C.F.R. § 41.37(c)(1)(vii).

Claims 1 and 15

The Examiner finds that Bjornberg and Baer disclose a flexible laminate structure as claimed in independent claims 1 and 15 with the exception of a film layer (i.e., one substrate) which is impermeable to liquids and permeable to gases. (Ans. 5, 11.) The Examiner further finds Tanzer discloses that an absorbent article may include a back sheet layer which is a breathable material constructed or treated to impart a desired level of liquid impermeability. (Ans. 5-6, 11.) The Examiner contends that it would have been obvious to one of ordinary skill in the art to substitute Tanzer's breathable film layer for Bjornberg's and Baer's back sheets to allow moisture vapor to escape out of the composite while preventing liquid from passing through the layer. (Ans. 6, 11-12.)

Claim 25

The Examiner finds that the combined teachings of Bjornberg and Tanzer disclose Appellants' independent claim 25 method. (Ans. 7.)

The Examiner finds that the combined teachings of Baer and Tanzer disclose Appellants' claim 25 method with the exception of applying a suction force to facilitate positioning of functional material in discrete regions. (Ans. 14.) The Examiner contends that it would have been obvious to have used a vacuum method to supply particles as taught by Bjornberg in Baer's method to provide more control over the amount and location of particles in the composite material. (Ans. 14.)

*Rejection of claims 1-10, 12-20, 22-34, and 36-42 under
35 U.S.C. § 103(a) as unpatentable over Bjornberg in view of Tanzer*

Appellants contend that neither Bjornberg nor Tanzer, alone or in combination, teaches or suggests first *and* second textured substrates as

claimed. (Br. 7, 10.) Appellants further contend that the Examiner's motivation to combine Bjornberg and Tanzer is based on improper hindsight reconstruction. (Br. 13.) With respect to claim 25, Appellants additionally argue that "neither of the references, either alone or in combination, teaches the step of texturing each substrate and fusing the thermoplastic polymer of said first substrate with the thermoplastic polymer of said second substrate using heat and pressure to form elevations and depressions in each substrate." (Br. 11-12.)

The contentions of the Examiner and the Appellants raise the following issue for our consideration: have Appellants shown that the Examiner reversibly erred in rejecting the claims because the combined teachings of Bjornberg and Tanzer fail to disclose or suggest a second textured substrate and/or because the Examiner's proposed combination is based on improper hindsight reasoning?

We have separately considered this issue with respect to each of argued claims 1, 15, and 25. For the reasons discussed below, we answer this question in the negative as to all three claims.

As an initial matter, we note that the Examiner and Appellants disagree over the meaning of the phrase "wherein each substrate is textured using heat and pressure to form elevations and depressions in each substrate" (claims 1 and 15). Accordingly, prior to addressing the issues before us in this Appeal, we first consider the scope and meaning of the disputed claim language. *See Gechter v. Davidson*, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

The Examiner maintains that the use of heat and pressure to form elevations and depressions would produce "a composite structure

comprising a top sheet and back sheet discontinuously bonded together with unbonded pocket regions between the two outer layers, wherein the pocket regions are not flat, but extend out from the bonded regions of the composite.” (Ans. 6.) Appellants argue that “[a] ‘substantially flat’ sheet that only bulges upon contact with particles is not ‘textured’ as understood in the art—i.e., it does not possess a textured form in the absence of such particles.” (App. Br. 8.)

During examination, claims terms must be given their broadest reasonable construction consistent with the specification. *In re Icon Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007)(“[T]he PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms but otherwise apply a broad interpretation.”). “[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms . . . the context in which a term is used in the asserted claim can be highly instructive.” *Philips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). It is, however, permissible to use dictionaries to help determine what a person of ordinary skill in the art would understand the claim terms to mean. *Id.* at 1319. Prior art references may be “indicative of what all those skilled in the art generally believe a certain term means . . . [and] can often help to demonstrate how a disputed term is used by those skilled in the art.” *Vitronics Corp. v. Conception, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996). The correct reading of product-by-process claims is that they are not limited to product prepared by the process set forth in the claims. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1583 (Fed. Cir. 1991).

Turning first to the language of the claims, we note that claims 1 and 15 are directed to a flexible laminate *structure*, not to the individual substrates. In other words, the claims define the characteristics of the substrates when they are part of a flexible laminate structure, rather than prior to use in the structure as suggested by Appellants. Additionally, the phrase “wherein each substrate is textured using heat and pressure to form elevations and depressions in each substrate” (claims 1 and 15) is drafted in product-by-process format, i.e., “heat and pressure” are method limitations.

Looking next to the Specification, we note that Appellants have not explicitly defined the term “textured” or “textured substrate.” However, portions of the Specification which describe the laminate structure include the following:

In general, the present invention is directed to a flexible laminate structure that contains pockets formed by fusing at least two substrates together. (Spec. 8, ll. 14-15.)

[A] substrate used in the present invention can be formed from films, nonwoven webs, or combinations thereof. (Spec. 9, ll. 6-8.)

[I]n some embodiments, one or more of the substrates used in the flexible laminate structure can contain an elastomeric component. (Spec. 13, ll. 15-17.)

[A]n elastomeric component can enhance the flexibility of the resulting laminate structure by enabling the structure to be more easily bent and distorted. (Spec. 13, ll. 22-24.)

Typically, the thermoplastic polymers of each substrate are fused together to form fused portions and unfused portions located between the fused portions. The unfused portions define pockets that contain discrete regions of a functional material, such as particles and/or liquids. For example, in some

embodiments, the functional material can be initially deposited onto the first substrate utilizing a deposition technique, such as template, vacuum plate, adhesive, textured substrates, electrostatic, xerographic, printing (e.g., gravure), patterned transfer roll (vacuum or adhesive), and the like.
(Spec. 2, l. 30-3, l. 8.)

In our view, the foregoing Specification passages support the Examiner's position that one of ordinary skill in the art would interpret the claim recitation "wherein each substrate is textured . . ." as including a laminate structure in which the substrates include elevations and depressions due to the presence of particles. In particular, we note that the Specification describes forming pockets (elevations/depressions) *by fusing the substrates together* (see Spec., *supra*, p. 2, l. 30 - p. 3, l. 2) and that the substrates may be constructed of materials which can be easily distorted (see Spec., *supra*, p. 13, ll. 22-24). Moreover, the Examiner's claim interpretation does not conflict with conventional dictionary definitions of "textured," e.g., "a rough or grainy surface quality" as "having surface roughness" (textured. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved September 23, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/textured>.) Appellants argue that "forming such textured substrates . . . that fuse together to form fused portions [] generally requires a certain level of heat and pressure to mold and shape the substrates into a textured form." (Br. 8.) Appellants suggest that one of ordinary skill in the art would understand that a textured substrate is one that would retain its textured form upon cooling. (Br. 8.) However, the claims do not require a particular level of heat and pressure, nor do they

require thermoformable substrates.¹ Moreover, Appellants have not provided evidence to support their proposed definition of “textured substrate.”

We now address the issue presented in connection with the rejection of claims 1-10, 12-20, 22-34, and 36-42 under 35 U.S.C. § 103(a) as unpatentable over Bjornberg in view of Tanzer. The following enumerated findings of fact are relevant.

1) Bjornberg is directed to an absorbent pad and method of manufacture therefor. (Title.) The pad includes a liquid-impervious back sheet 3. (Col. 3, ll. 58-59.) The pad further includes a plurality of spaced bodies 4 of absorbent material (col. 3, ll. 66-67) “contained in pockets 5 formed in a continuous liquid-pervious cover sheet 7 that overlies the bodies 4 and is directly secured to back sheet 3 along channels 9 between bodies 4” (col. 4, ll. 10-13).

2) According to Bjornberg, “the materials of the back sheet 3, the absorbent bodies 4, and the cover sheet 7 can all be conventional.” (Col. 4, ll. 51-53.) “The material of [back] sheet 3 can be that which is conventionally used as the liquid-impervious back sheet for diapers and incontinence pads and the like, for example polyethylene film of a thickness of 0.010 mm to 0.050 mm.” (Col. 3, ll. 59-63.) “The cover sheet 7 can be woven or non-woven, preferably non-woven. A typical

¹ Claims 1, 15, and 25 require substrates “containing” thermoplastic polymers, which means that substrates including other, non-thermoplastic materials are within the scope of the claims.

example of such non-woven material is extruded fibrous polypropylene.” (Col. 4, ll. 35-37.)

3) Bjornberg states that “[t]he pockets 5 can vary in depth from 1 mm to 20 mm or even more.” (Col. 4, ll. 33-34.) The bodies can also be elongated, having a length to width ratio from 1:1 up to 1:4 or even more.

4) In use, the pad is worn such that liquid from the wearer’s body readily penetrates the liquid-pervious cover sheet 7 and is absorbed by absorbent bodies 4. (Col. 5, ll. 1-3.)

5) In accordance with Bjornberg’s method of making the absorbent pad,

[t]he cover sheet is secured, either adhesively or by heat sealing, directly to the impervious [back] sheet along lines that separate the islands of absorbent material and the pockets that contain them. The pad is formed by applying a strip of cover sheet material to a rotating multi-perforate drum and forming the pockets in the cover sheet material either mechanically, or by drawing hot air inwardly through the holes in the drum in the case of a heat-deformable material such as polypropylene fibers. The drum then rotates past a pocket-filling station, where absorbent material such as cellulose fluff is drawn into the pockets by vacuum applied internally of the drum. The cover sheet is then applied to the composite of cover sheet and absorbent material, and is firmly bonded to lines of cover sheet material that are free from absorbent material between the pockets, overlying the bridges that separate the holes through the drum. The composite is then removed from the drum and cut to size.

(Abstract.)

6) Bjornberg discloses an embodiment in which pockets are formed in a cover sheet comprising a thermoplastic material by drawing heated air through the cover sheet as it passes over a drum 17 having holes formed therein. (Col. 5, ll. 39-56.) A back sheet comprising a coextruded film having a thin layer of easily heat-sealable material is pressed against the cover sheet using a heated roll 59 to form a laminate structure. (Col 7, ll. 3-7 and 16-23.)

7) Bjornberg states that “[w]hether the material of the cover sheet is or is not thermoplastic, it can be mechanically preformed to the shape of the required pockets by passing it between embossing rolls or belts or the like, it being possible to use the drum [] itself as one of the embossing rolls.” (Col. 7, ll. 48-52.)

8) Tanzer is directed to an absorbent article which includes superabsorbent material located in discrete pockets. (Title.) The articles are, more specifically, disposable personal care absorbent articles. (Col. 2, l. 68-col. 3, l. 2.)

9) In an exemplary embodiment, the absorbent article is a diaper 10 (col. 3, ll. 5-6) which includes a liquid permeable topsheet 28, a substantially liquid impermeable backsheet 30, and an absorbent body positioned between the topsheet and backsheet (col. 3, ll. 64-67).

10) Tanzer describes topsheet 28 as “a body-facing surface which is compliant, soft-feeling, and non-irritating when contacting the wearer’s skin.” (Col. 5, ll. 14-16.) According to

Tanzer, “[v]arious woven and nonwoven fabrics can be used for topsheet 28. For example, the topsheet may be composed of a meltblown or spunbonded web of polyolefin fibers. The topsheet may also be a bonded-carded-web composed of natural and synthetic fibers.” (Col. 5, ll. 28-32.)

11) Tanzer states that “[b]acksheet 30 may be composed of a liquid permeable material, but preferably comprises a material which is configured to be substantially impermeable to liquids. For example, a typical backsheet can be manufactured from a thin plastic film, or other flexible liquid-impermeable material.” (Col. 6, ll. 21.) “In particular embodiments of the invention, backsheet 30 is a polyethylene film having a thickness of from about 0.012 millimeters to about 0.051 millimeters.” (Col. 6, ll. 37-39.)

12) According to Tanzer, “[b]acksheet 30 may optionally be composed of a micro-porous, ‘breathable’ material which permits water vapor to escape from absorbent structure 32 while still preventing liquid exudates from passing through the backsheet. For example, the breathable backsheet may be composed of a microporous polymer film or a nonwoven fabric which has been coated or otherwise treated to impart a desired level of liquid impermeability.” (Col. 6, ll. 60-68.) The backsheet can be embossed. (Col. 7, ll. 4-5.)

13) Tanzer states that “[t]opsheet 28 and backsheet 30 can be affixed directly to each other . . . by attachment means . . . such

as an adhesive, sonic bonds, thermal bonds or any other attachment means known in the art.” (Col. 7, ll. 26-30.)

“When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007). When “the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product.” *In re Best*, 562 F.2d 1252, 1255-56 (CCPA 1977); *see also In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990) (“[W]hen the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.”).

Appellants argue that the combined teachings of Bjornberg and Tanzer fail to disclose or suggest a second textured substrate. Appellants contend that Bjornberg only discloses forming pockets in the cover sheet and does not teach or suggest giving any shape to the backing sheet. (Ans. 9.) Appellants argue that “claims 1, 15, and 25 require that both substrates are textured using heat and pressure.” (Br. 9.)

We are not persuaded by Appellants' arguments. In our view, the above-noted factual findings support the Examiner's contention that Bjornberg discloses the same process described by Appellants and, therefore, would be expected to produce the texturized structure claimed by Appellants (Ans. 7). *Compare* FF 5, 6 *with* Spec. 23, l. 15 – 24, l. 5 (describing method for forming the flexible structure).

Appellants attempt to distinguish their process from that of Bjornberg by pointing out that the Specification discloses fusing the first and second substrate with two heated rolls having patterns of protrusions. (Br. 9.) However, the claims do not include this limitation and the Specification clearly states that the second roll need not be heated or have protrusions in order to form a laminate structure within the scope of the invention. (*See* Spec. 24, ll. 4-10.) As explained above (pp. 7-8), the claimed invention is directed to a "laminate structure" and method for forming a "laminate structure." Thus, while the claims require textured substrates within the laminate structure, the claims do not require texturizing the individual substrates prior to forming the structure. With respect to method claim 25, we note that the processes of "texturing each substrate and fusing" are recited as part of the same step, and the claims do not preclude simultaneous texturing and fusing. We further note that Bjornberg and Appellants utilize the same types of flexible materials for the laminate substrates. (*See* FF 2 and p. 9, *supra*.) Therefore, we are in agreement with the Examiner that because Bjornberg's laminate structure is produced using the same method and materials as Appellants' claimed structure, the cover and backing sheets (i.e., substrates) would inherently bulge out forming regions with elevations and depressions as recited in appealed claims 1, 15, and 25. (Ans. 7.)

In an attempt to refute the Examiner's finding of inherency, Appellants argue that Bjornberg expressly discloses that the back sheet is substantially flat. (Br. 10, citing Bjornberg, col. 5 and claim 5.) However, Appellants are reminded that obviousness is based on the teachings of the reference as a whole, and a reference disclosure is not limited to preferred embodiments.²

Appellants also argue that the Examiner's motivation for substituting Bjornberg's back sheet with Tanzer's back sheet is based solely on improper hindsight reconstruction, because Tanzer's back sheet serves a different function, i.e., is not used as part of a laminate substrate having defined pockets containing discrete regions of a functional material. (Br. 12-13.) This argument is not persuasive because it fails to refute the facts and reasons relied on by the Examiner for combining the references. Specifically, contrary to Appellants' contention, the Examiner relies on Tanzer solely for a disclosure of suitable types of breathable *materials* for use in back sheets in the same types of absorbent articles, e.g., diapers, disclosed in Bjornberg (*See* Ans. 6.). Both Bjornberg and Tanzer refer to a back sheet as a layer which contains liquid that has passed through the layer (i.e., cover layer) adjacent the wearer's skin. (FF 1, 2, 4, and 9-11.) Tanzer discloses a backsheet material which allows water vapor to escape from absorbent structure while still preventing liquid from passing through it. (FF

² Although we conclude that the Examiner properly established a prima facie case of obviousness based on a determination that the combined teachings of the references would inherently produce Appellants' claimed structure, we also note additional support for the use of two textured substrates is provided by Tanzer's disclosure that the backsheet may be "embossed" (FF 12), Bjornberg teaching that embossing is a suitable method of mechanically forming pockets (FF 7).

12.) The breathable material may be composed of a microporous polymer film or a nonwoven fabric. (FF 12.) Tanzer further states that the backsheet material may be thermally bonded. (FF 13.) Based on these teachings, we think the Examiner reasonably concluded that the ordinary artisan would have been motivated to use Tanzer's back sheet material in Bjornberg's backing layer since it would provide the same advantages of flexibility, liquid impermeability, and heat fusibility, yet would provide the additional advantage of breathability. (*See* Ans. 19-20.)

In sum, we conclude that Appellants have failed to establish reversible error in the Examiner's rejection of claims 1-10, 12-20, 22-34, and 36-42 under 35 U.S.C. § 103(a) as unpatentable over Bjornberg in view of Tanzer.

We now turn to the Examiner's rejection of the claims as unpatentable over Baer in view of Tanzer (claims 1 and 15) and Bjornberg (claim 25). We note that while we have fully considered Appellants' arguments in connection with these grounds of rejection, we provide somewhat less detailed analyses since Appellants' arguments are essentially the same as those raised in connection with the first ground of rejection, and, therefore, are unpersuasive for essentially the same reasons explained above and in the Examiner's Answer (*see* Ans. 16-23).

*Rejection of claims 1-10, 12-20, 22-24, 40 and 41 under
35 U.S.C. § 103(a) as unpatentable over Baer in view of Tanzer*

Appellants do not dispute the Examiner's finding (Ans. 10) that Baer discloses an absorbent pad for absorbing body liquids comprising a flexible laminate structure in which the substrates are

textured as recited in claims 1 and 15. (*See* Br. 13-16.) Appellants do, however, argue that the Examiner's motivation to combine Baer and Tanzer is based on improper hindsight reconstruction. (Br. 16.) Appellants again argue that Tanzer's back sheet is not used as part of a laminate substrate having defined pockets containing discrete regions of a functional material and, therefore, one of ordinary skill in the art would not have been motivated to use the back sheet in Baer's structure. (Br. 15-16; *see, supra*, p. 16.)

We are not persuaded by this argument for the reasons stated by the Examiner (Ans. 20-21) and for essentially the same reasons discussed above in connection with Appellants' arguments in response to the Examiner's proposed motivation to combine Bjornberg and Tanzer (*supra*, pp. 16).

Appellants also argue that Baer and Tanzer "fail to teach or suggest a flexible laminate structure containing pockets, wherein those pockets have an approximate width to height ratio of less than about 10 (or between about 1 to about 8)." (Br. 14.) The Examiner's rejection, however, is based on a finding that the size and shape of the pockets would have been a matter of routine optimization within the level of skill of the ordinary artisan at the time of the invention. (Ans. 10-11.) Appellants' arguments alone are not sufficient to rebut this finding. (*See* Ans. 20 (citing *In re Aller* and *In re Dailey*).)

Accordingly, we conclude that Appellants have not shown reversible error in the Examiner's rejection of claims 1-10, 12-20, 22-24, 40 and 41 under 35 U.S.C. § 103(a) as unpatentable over Baer in view of Tanzer.

Rejection of claims 25-34, 36-39, and 42 under 35 U.S.C. § 103(a) as unpatentable over Baer in view of Tanzer, and further in view of Bjornberg

Appellants do not dispute the Examiner's finding that Baer generally discloses Appellant's claimed method with the exception of applying particles to the substrate "in discrete regions." (Br. 16.) Nor do Appellants present arguments or evidence to refute the Examiner's assertion that the use of vacuum suction force, as taught by Bjornberg, in Baer's method, would provide greater control over the deposition of particles on the substrate (Ans. 14). (See Br. 17-18.) Rather, Appellants contend that "[t]here is no teaching or suggestion in the prior art how one of ordinary skill in the art would modify the process disclosed by [Baer] with teachings from the process disclosed by [Bjornberg] and arrive at Appellants' method of independent claim 25." (Br. 17.)

For an obviousness determination, it is not necessary to show that all the features of one reference may be physically incorporated into another reference. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981); *In re Griver*, 354 F.2d 377, 381 (CCPA 1966); *In re Billingsley*, 279 F.2d 689, 691 (CCPA 1960). Moreover, an obviousness "analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S.Ct. at 1740-41.

In our view, the Examiner provided a well reasoned basis for concluding that the claimed invention would have been obvious in view of the applied prior art. (Ans. 14 and 21-23.) Appellants arguments are not persuasive because they do not address the facts and reasons relied on by the Examiner in rejecting the claims. In particular, Appellants present general

arguments, but have not explained, with any degree of specificity, why one of ordinary skill in the art would not have been motivated to modify Baer's process to apply particles in discrete regions, as taught by Bjornberg, in order to achieve greater control over particle deposition. *See, e.g.*, Br. 17 (“[I]t appears that the proposed combination of [Bjornberg] (which includes a vacuum chamber 37 that aids in filling its pockets with absorbent material) with [Baer] is improperly based on the hindsight combination of components. . . .”). Accordingly, we conclude that Appellants have not identified reversible error in the Examiner's rejection of claims 25-34, 36-39, and 42 under 35 U.S.C. § 103(a) as unpatentable over Baer in view of Tanzer, and further in view of Bjornberg.

Appellants have not requested review of the remaining grounds of rejection advanced by the Examiner (Ans. 2-3).³ Accordingly, we summarily sustain these grounds of rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii); Manual of Patent Examining Procedure 1205.02 (8th ed., Rev. 3, August 2005).

³ Claims 2-10, 12-14, 16-20, 22-24, 26-34, and 36-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg. in view of Tanzer. Claims 2-10, 12-14, 16-20, 22-24, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer and Tanzer. Claims 26-34, 36-39, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer and Tanzer, as applied above, and further in view of Bjornberg. Claims 11, 21, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg and Tanzer as applied to claims 1, 15, and 25 above, and in further view of Taylor. Claims 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer and Tanzer as applied to claims 1 and 15 above, and in further view of Taylor for the reasons of record. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baer, Tanzer, and Bjornberg as applied to claim 25 above, and in further view of Taylor for the reasons of record.

CONCLUSION

The decision of the Examiner rejecting claims 1-42 under is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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